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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **SOUTHERN DIVISION**
12

13 JENNIFER BAGOSY, and ALEX
BAGOSY

14 Plaintiffs,

15 v.

16 PHH MORTGAGE SERVICES and
DOES 1-50 INCLUSIVE,

17 Defendants;
18

CASE NO. 8:18-CV-1750

NOTICE OF REMOVAL

Action filed: June 27, 2018

1 **TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL**
2 **DISTRICT OF CALIFORNIA, PLAINTIFFS AND THEIR COUNSEL OF**
3 **RECORD:**

4 **PLEASE TAKE NOTICE THAT**, pursuant to 28 U.S.C. §§1332 and
5 1441, defendant PHH Mortgage Services (“PHH”), hereby removes the action
6 entitled *Jennifer Bagosy and Alex Bagosy v. PHH Mortgage Services*, Case No.
7 BC 30-2018-01002146-CU-CO-CJC, Superior Court of California, County of
8 Orange (the “Action”), to the United States District Court for the Central District
9 of California, Southern Division, on the following grounds:

10 1. Removal Is Timely. Plaintiffs Jennifer Bagosy and Alex Bagosy
11 (“Plaintiffs”) filed the Action on June 27, 2018. PHH was served on August 27,
12 2018. This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b) because it
13 has been filed within 30 days of service on PHH, and within one year after
14 “commencement of the action” in state court. Pursuant to 28 U.S.C. § 1446(a), a
15 true and correct copy of the Complaint is attached hereto as Exhibit A.

16 2. Diversity Of Citizenship. This Court has jurisdiction of this case
17 under 28 U.S.C. § 1332 because complete diversity exists and the amount in
18 controversy exceeds \$75,000.00, as discussed below.

19 3. Plaintiffs specifically plead that they are California citizens
20 (Compl., ¶ 1), and the subject property is located in California – 15 Oatfield Farm,
21 Ladera Ranch, California, 92694 (the “Property”). Compl., ¶¶ 2 & 9.
22 Accordingly, for purposes of diversity jurisdiction, Plaintiff is a citizen of
23 California. Plaintiff alleges that PHH violated the Homeowners Bill of Rights, in
24 connection with alleged conduct pertaining to non-judicial foreclosure proceedings
25 regarding the Property, including allegedly failing to assign a single point of
26 contact in violation of California Civil Code § 2923.7 and alleged fraudulent
27 activity in connection with the sale of the Property. See generally Compl.
28

1 Accordingly, for purposes of diversity jurisdiction, Plaintiffs are citizens of
2 California.

3 4. For diversity purposes, a corporation is a citizen of both its state of
4 incorporation and its principal place of business. See 28 U.S.C. § 1332(c)(1).
5 PHH is a New Jersey Corporation, with its principal place of business in Mount
6 Laurel, New Jersey. Accordingly, PHH is a citizen of New Jersey for purposes of
7 diversity jurisdiction.

8 5. The Amount In Controversy Is Satisfied. In actions “arising out of the
9 foreclosure of a plaintiff’s home, the amount in controversy may be established by
10 the value of the property or by the value of the loan.” Major v. Wells Fargo Bank,
11 N.A., No. 14-cv-998-LAB-RBB, 2014 U.S. Dist. LEXIS 114977, *2 (S.D. Cal.
12 Aug. 18, 2014) (finding amount in controversy satisfied based on amount of loan
13 on property at issue). Notably, in demonstrating that the amount in controversy is
14 satisfied, PHH does not concede liability or that Plaintiffs are entitled to any
15 amount or recovery. See, e.g., Lewis v. Verizon Communications, Inc., 627 F. 3d
16 395, 400 (9th Cir. 2010) (holding that in establishing “jurisdictional amount, [the
17 moving party] need not concede liability for the entire amount, which is what the
18 district court was in essence demanding by effectively asking [the moving party] to
19 admit that at least \$5 million of the billings were ‘unauthorized’ within the
20 meaning of the complaint.”).

21 6. Here, the amount in controversy is satisfied as the Complaint concerns
22 the sale of the Property, which Plaintiffs purchased by obtaining a loan in the
23 original principal amount of \$504,000.00, and because Plaintiffs seek damages in
24 the form of lost profits from the sale of the Property, which based on the
25 allegations of the Complaint allegedly exceed \$75,000.00. Compl., ¶¶ 14, 59, 61,
26 72, 106. Plaintiffs allege that from 2006 to 2016 the value of the Property
27 fluctuated; however, Plaintiffs do not allege that the value of the Property ever
28 dropped below \$75,000.00. See generally Compl. Specifically, Plaintiffs allege

1 that they listed the Property for sale through Coldwell Banker for \$449,900.00 on
 2 or about May 14, 2016 (Compl., ¶ 59), and that on May 29, 2016 PHH's appraiser
 3 valued the Property at \$557,000.00. Compl., ¶ 61. Plaintiffs further allege that a
 4 short sale closed on February 28, 2017, for the purchase price of \$450,000.00, and
 5 that the buyer then re-sold the Property in June 2017 for \$625,000 Compl., ¶¶ 74,
 6 76. Plaintiffs also allege that the current estimated value of the Property is
 7 \$661,000.00. Compl., ¶ 77. According to Plaintiffs, where they able to secure a
 8 loan modification they would have been able either (i) to divest themselves of the
 9 Property in 2016 (presumably when the Property, at least according to the
 10 Complaint, had an appraised value of \$557,000.00), or (ii) remain in the Property,
 11 make needed repairs by 2017, and "sell it [at] an ultimate resale value that would
 12 have enabled Plaintiffs to earn a profit" from the Property. Compl. ¶ 78.
 13 Plaintiffs' specifically seek as damages "lost profits associated with the ultimate
 14 sale of the home." Compl. ¶ 106; see also id. ¶¶ 120, 126, 133.

15 7. Again, in foreclosure-related cases, the amount in controversy may be
 16 established by the value of the property or loan. Based on the allegations of the
 17 Complaint, that is satisfied. Moreover, the amount in controversy is satisfied to the
 18 extent Plaintiffs seek lost profits from the sale of the Property. Plaintiffs allege
 19 that "but for" the alleged conduct at issue they could have sold the Property in
 20 2016 for \$557,000, in 2017 for \$625,000, or in 2018 for \$661,000. Based on the
 21 \$450,000 February 2017 sale price, if the Property were sold at any of the alleged
 22 alternate values, the difference exceeds \$75,000. Accordingly, the amount in
 23 controversy is satisfied.

24 8. Proper Jurisdiction. This Court is the proper district court for removal
 25 because the Superior Court of the State of California for the County of Orange is
 26 located within the United States District Court for the Southern District of
 27 California. See 28 U.S.C. § 1446(a).

1 9. Pleadings and Process. Attached hereto as Exhibit A are copies of all
2 process, pleadings and orders served upon PHH in the state court action. See 28
3 U.S.C. § 1446(a).

4 10. Notice Has Been Effected. PHH is concurrently filing a copy of this
5 Notice of Removal, attached hereto as Exhibit B, with the Superior Court of the
6 State of California for the County of Orange, which will be promptly served upon
7 Plaintiff's counsel. See 28 U.S.C. §§ 1446(a), (d).

8 11. By filing this Notice of Removal, PHH does not waive any defenses
9 to Plaintiff's allegations or objections to personal jurisdiction, including but not
10 limited to sufficiency of process, service of process, and jurisdiction.

11 Dated: September 26, 2018

Respectfully submitted,

12 By: /s/ Tanya M. Taylor

13 Tanya M. Taylor
14 *Attorneys for Defendant*
15 *PHH Mortgage Services*
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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of September, 2018, a copy of the foregoing **NOTICE OF REMOVAL** was filed electronically. Notice of this filing will be sent by email to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF system.

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